

## **Deposition Designations for:**

**RICHARD FINKE**  
**March 30, 2009**

### **Deposition Designation Key**

**CI = Certain insurers (green)**

**CNA = Continental Cas. Co &  
Continental Ins. Co. (red)**

**PP's = Plan Proponents (blue)**

**Obj: = Objection**

**Ctr = Counter Designation**

**R = Relevance**

**BE = Best Evidence**

**F = Foundation**

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: ) Chapter 11  
 )  
W. R. GRACE & CO., ) Case No. 01-01139 JKF  
et al )  
 )  
Debtors )

Deposition of RICHARD CHARLES FINKE  
taken pursuant to notice at the law offices of  
Drinker, Biddle & Reath, LLP, 1100 North Market  
Street, Suite 1000, Wilmington, Delaware,  
beginning at 9:35 a.m., on Monday, March 30,  
2009, before Allen S. Blank, Registered Merit  
Reporter and Notary Public.

APPEARANCES:

LISA G. ESAYIAN, ESQUIRE  
KIRKLAND & ELLIS, LLP  
200 East Randolph Drive  
Chicago, IL 60601

For - Debtors

DANIEL A. SPEIGHTS, ESQUIRE  
SPEIGHTS & RUNYAN  
200 Jackson Avenue, East  
Hampton, SC 29924

For - Anderson Memorial Hospital

Key

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& Continental Ins. Co. Cred.

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W.R. Grace &amp; Co., et al.

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<p>1 APPEARANCES: CONTINUED 2 JOHN W. KOZYAK, ESQUIRE 3 KOZYAK TROPIN THROCKMORTON 4 2525 Ponce de Leon, 9th Floor 5 Miami, FL 33134 6 7 For - Anderson Memorial Hospital 8 9 MATTHEW I. KRAMER, ESQUIRE 10 BILZIN, SUMBERG, BAENA, PRICE 11 &amp; AXELROD, LLP 12 200 S. Biscayne Boulevard, Suite 2500 13 Miami, FL 33131-5340 14 15 For - PD Committee 16 17 ARLENE G. KRIEGER, ESQUIRE 18 STROOCK &amp; STROOCK &amp; LAVAN, LLP 19 180 Maiden Lane 20 New York, NY 10038-4982 21 For - Official Committee of 22 Unsecured Creditors 23 24 ALAN B. RICH, ESQUIRE 25 Elm Place 26 1401 Elm Street, Suite 4620 27 Dallas, TX 75202 28 For - PD FCR 29 ELISA ALCABES, ESQUIRE 30 SIMPSON, THACHER &amp; BARTLETT, LLP 31 425 Lexington Avenue 32 New York, NY 10017-3954 33 34 For - Travelers Casualty &amp; Surety 35 Company 36 KATHLEEN A. ORR, ESQUIRE 37 ORRICK, HERRINGTON &amp; SUTLIFFE, LLP 38 1152 15th Street, N.W. 39 Washington, D.C. 20005 40 41 For - David Anstern, Asbestos PI</p>	<p>1 APPEARANCES: CONTINUED 2 ANDREW F. CRAIG, ESQUIRE (VIA TELEPHONE) 3 CUYLER BURK, LLP 4 Parsippany Corporate Center 5 Four Century Drive 6 Parsippany, NJ 07054 7 For - Allstate Insurance Company 8 LAURA M. STOVER, ESQUIRE (VIA TELEPHONE) 9 NEARHOOD LAW OFFICES 10 7537 E. McDonald Drive 11 Scottsdale, AZ 85250 12 - and - 13 GABRIELLA V. CELLAROSI, ESQUIRE 14 (VIA TELEPHONE) 15 ECKERT SEAMANS 16 1747 Pennsylvania Avenue, N.W. 17 Suite 200 18 Washington, D.C. 20006-4604 19 For - Maryland Casualty Insurance 20 Company and Zurich 21 Insurance Company 22 ***** 23 RICHARD CHARLES FINKE, 24 the deponent herein, having first been 25 duly sworn on oath, was examined and 26 testified as follows: 27 28 EXAMINATION 29 30 BY MR. SPEIGHTS: 31 Q. Would you state your full name, please, 32 sir? 33 A. Yes. Richard Charles Finke, F-i-n-k-e. 34 Q. Mr. Finke, who are you employed by?</p>
Page 3	Page 5
<p>1 APPEARANCES: CONTINUED 2 MICHAEL F. BROWN, ESQUIRE 3 DRINKER, BIDDLE &amp; REATH, LLP 4 One Logan Square 5 18th and Cherry Streets 6 Philadelphia, PA 19103-6996 7 For - Government Employees Insurance 8 Company, Columbia Insurance, 9 One Beacon America Insurance 10 Company and Seaton Insurance 11 Company 12 SHANNON L. GRIFFIN, ESQUIRE 13 O'MELVENY &amp; MYERS, LLP 14 Times Square Tower 15 7 Times Square 16 New York, NY 10036 17 For - Arrowood Indemnity Company, 18 f/k/a Royal Indemnity Co. 19 20 MARNIE E. SIMON, ESQUIRE 21 STEVENS &amp; LEE 22 1818 Market Street, 29th Floor 23 Philadelphia, PA 19103-1702 24 - and - 25 JOHN D. DEMMY, ESQUIRE (VIA TELEPHONE) 26 STEVENS &amp; LEE 27 1105 North Market Street, 7th Floor 28 Wilmington, DE 19801 29 30 For - Firoman's Fund Insurance 31 Company 32 SHAYNE W. SPENCER, ESQUIRE 33 ELIZABETH DeCRISTOFARO, ESQUIRE (VIA 34 TELEPHONE) 35 FORD, MARRIN, ESPOSITO, WITMEYER 36 &amp; GLESER, LLP 37 Wall Street Plaza 38 New York, NY 10005-1875 39 For - CNA Insurance Company 40</p>	<p>1 A. W. R. Grace &amp; Co. 2 Q. How long have you been employed by Grace? 3 A. Twenty years. 4 Q. Can you tell me the approximate date you 5 started? 6 A. No. I can tell you the exact date I 7 started. February 27, 1989. 8 Q. Who do you presently report to? 9 A. Mark Shelnitz, general counsel of W. R. 10 Grace. 11 Q. How long have you reported to 12 Mr. Shelnitz? 13 A. Since he became general counsel, which 14 was three or four years ago. I forget how long. 15 Q. Does April 2005 seem about right? 16 A. It seems about right, yes. 17 Q. Would you give me the positions you have 18 held at Grace and the approximate dates you held 19 each position? 20 A. When I was hired, I held the position of 21 senior litigation counsel and I became assistant 22 general counsel for litigation in -- it was 23 around March of 2006. 24 Q. Is that your present position?</p>

2 (Pages 2 to 5)

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<p style="text-align: right;">Page 6</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. When you initially went to work at Grace,</p> <p>3 who did you report to?</p> <p>4 <b>A. I reported to Robert Beber, B-e-b-e-r.</b></p> <p>5 Q. And how long did you report to Mr. Beber?</p> <p>6 <b>A. Until he retired. He was general counsel</b></p> <p>7 <b>of W. R. Grace. When he retired, I frankly don't</b></p> <p>8 <b>recall the year or the date.</b></p> <p>9 Q. Who did you report to between the</p> <p>10 retirement of Mr. Beber and Mr. Shelnitz taking</p> <p>11 over as general counsel?</p> <p>12 <b>A. I reported to David Siegel, S-i-e-g-e-l,</b></p> <p>13 <b>who became general counsel after Mr. Beber.</b></p> <p>14 Q. Were you reporting to Mr. Siegel when</p> <p>15 Grace filed its petition for reorganization?</p> <p>16 <b>A. Yes.</b></p> <p>17 MS. GRIFFIN: May I interrupt? I</p> <p>18 apologize. I'm Shannon Griffin with O'Melveny &amp;</p> <p>19 Myers. I represent Arrowwood Indemnity. And I</p> <p>20 thought we were going to do introductions. So I</p> <p>21 apologize for the interruption.</p> <p>22 But I would like to enter an exhibit</p> <p>23 before we take off on Arrowwood's objections,</p> <p>24 which were filed last night. Everyone should</p>	<p style="text-align: right;">Page 8</p> <p>1 in the objection.</p> <p>2 And to the extent that the debtor</p> <p>3 implied on Friday that this was the one and only</p> <p>4 time that this witness would be provided, we</p> <p>5 object to any implication of that sort and</p> <p>6 reserve our rights to take another deposition as</p> <p>7 required.</p> <p>8 MS. SIMON: And my clients, Firemen's</p> <p>9 Fund Insurance Company, also joins in the</p> <p>10 objections and reserves its rights to depose the</p> <p>11 deponent at that time, if necessary.</p> <p>12 MR. SPENCER: Continental Casualty</p> <p>13 also joins in the objection and reserves its</p> <p>14 rights as stated by all other counsel previously.</p> <p>15 MS. ESAYIAN: From the debtor's</p> <p>16 perspective, everyone's reservations of rights</p> <p>17 are noted and I believe our position was clearly</p> <p>18 stated on Friday. And I won't take more time</p> <p>19 here.</p> <p>20 BY MR. SPEIGHTS:</p> <p>21 Q. Mr. Finke, were your general duties and</p> <p>22 responsibilities the same from 1989 until the</p> <p>23 bankruptcy?</p> <p>24 <b>A. Yes.</b></p>
<p style="text-align: right;">Page 7</p> <p>1 have received a copy. And I have copies for</p> <p>2 everybody here. But I would like to mark this as</p> <p>3 Exhibit 1 so I don't have to keep objecting</p> <p>4 throughout.</p> <p>5 MR. SPEIGHTS: I have not seen it so</p> <p>6 I would like to see it before you mark it.</p> <p>7 MS. GRIFFIN: Sure.</p> <p>8 (Finke Deposition Exhibit No. 1 was</p> <p>9 marked for identification.)</p> <p>10 MR. SPEIGHTS: Although it's normal</p> <p>11 for a party to mark its exhibits during its own</p> <p>12 examination, I certainly don't object to counsel</p> <p>13 marking it now to avoid having to state these</p> <p>14 same objections orally or restate them</p> <p>15 innumerable times.</p> <p>16 MS. GRIFFIN: Thank you.</p> <p>17 MR. BROWN: While we are doing that,</p> <p>18 so that we can avoid it. My clients, Government</p> <p>19 Employees Insurance Company, Columbia Insurance</p> <p>20 Company and Seaton Insurance Company and One</p> <p>21 Beacon America Insurance Company, join in those</p> <p>22 objections.</p> <p>23 MS. ALCABES: My clients as well,</p> <p>24 Travelers Casualty &amp; Surety Company, also joins</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. Can you generally describe what your</p> <p>2 duties and responsibilities were during that</p> <p>3 period?</p> <p>4 <b>A. Primarily, I was responsible for</b></p> <p>5 <b>oversight and management of asbestos property</b></p> <p>6 <b>damage cases, including reporting to Grace</b></p> <p>7 <b>management on the status or developments in those</b></p> <p>8 <b>cases.</b></p> <p>9 <b>I also was responsible for oversight</b></p> <p>10 <b>of expert witnesses that Grace retained or</b></p> <p>11 <b>Grace's counsel retained to testify in the</b></p> <p>12 <b>asbestos property damage litigation.</b></p> <p>13 Q. Were you part of a, for lack of a better</p> <p>14 term, a team of lawyers working under Mr. Beber?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And what did you call the team?</p> <p>17 <b>A. Just the asbestos litigation group</b></p> <p>18 <b>informally.</b></p> <p>19 Q. When a case was filed against Grace, how</p> <p>20 was it decided which member of the group would be</p> <p>21 responsible for that case?</p> <p>22 <b>A. Early in the process or shortly after the</b></p> <p>23 <b>team was formed, the caseload was divided</b></p> <p>24 <b>geographically so that each person of the team</b></p>

3 (Pages 6 to 9)



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<p>1 <b>did.</b></p> <p>2 Q. Was it searchable?</p> <p>3 <b>A. To a limited extent, yes.</b></p> <p>4 Q. Who in your office was the person that</p> <p>5 you would go to if you needed something searched?</p> <p>6 <b>A. I would have gone to my paralegal.</b></p> <p>7 <b>Initially, it was Gail, whose last name I can't</b></p> <p>8 <b>recall. And after Gail, to my paralegal that's</b></p> <p>9 <b>still with us, Adie Hammond. A-d-i-e.</b></p> <p>10 Q. H-a-m-m-o-n-d?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Have you seen pages of the index?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Have you seen the entire index printed</p> <p>15 out?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Do you know how long the index would be,</p> <p>18 how many pages if you printed it out or how many</p> <p>19 gigabytes or whatever these computer people call</p> <p>20 the amount of it in the computer?</p> <p>21 <b>A. No, I don't know. I think it would be</b></p> <p>22 <b>extremely voluminous if it were printed out in</b></p> <p>23 <b>hard copy. But I don't know by how much.</b></p> <p>24 Q. Does the index actually show the document</p>	<p>1 <b>injury case. And then I would talk to Jay Hughes</b></p> <p>2 <b>about that issue or the expert to determine</b></p> <p>3 <b>either if he needed assistance relating to that</b></p> <p>4 <b>issue or expert or if -- or just for my own</b></p> <p>5 <b>edification to see if anything going on in this</b></p> <p>6 <b>personal injury case might impact the property</b></p> <p>7 <b>damage.</b></p> <p>8 Q. Who is Jay Hughes?</p> <p>9 <b>A. Jay Hughes is an attorney with W. R.</b></p> <p>10 <b>Grace. He has been with Grace longer than I</b></p> <p>11 <b>have. He is still with Grace. And Jay's primary</b></p> <p>12 <b>responsibility at Grace was to oversee the</b></p> <p>13 <b>personal injury litigation.</b></p> <p>14 Q. Did he report to Mr. Beber before</p> <p>15 Mr. Beber's retirement?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. And did he then report to Mr. Siegel</p> <p>18 while he was general counsel?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And does he presently report to</p> <p>21 Mr. Shelnitz?</p> <p>22 <b>A. He presently reports to me.</b></p> <p>23 Q. I'd like to talk about Anderson before</p> <p>24 the bankruptcy a few minutes. First of all, see</p>
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<p>1 like in a PDF format or is it just a list of the</p> <p>2 documents with certain information?</p> <p>3 <b>A. It's a list of the documents with certain</b></p> <p>4 <b>fields.</b></p> <p>5 Q. What fields?</p> <p>6 <b>A. Product type, job sites, product names,</b></p> <p>7 <b>dates, names of addressees, names of the sender</b></p> <p>8 <b>or author. And number, a number had been</b></p> <p>9 <b>assigned to each document. So the document</b></p> <p>10 <b>number would appear. I don't recall what else.</b></p> <p>11 Q. Would that be a Bates stamp number?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And, as I understand it, someone with</p> <p>14 computer skills could search it by any of these</p> <p>15 fields?</p> <p>16 <b>A. That's correct.</b></p> <p>17 Q. Did you have any involvement with the</p> <p>18 personal injury litigation before the bankruptcy?</p> <p>19 <b>A. Very little.</b></p> <p>20 Q. What little did you have?</p> <p>21 <b>A. On occasion, there may be an issue in a</b></p> <p>22 <b>personal injury case that came to my attention or</b></p> <p>23 <b>an expert involved in the property damage</b></p> <p>24 <b>litigation would be appearing in a personal</b></p>	<p>1 if we can try to pin down when you had</p> <p>2 responsibility for Anderson. Did you have</p> <p>3 responsibility for Anderson when the venue motion</p> <p>4 was decided and the judge said it could be</p> <p>5 maintained in Hampton County?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Did you have responsibility for Anderson</p> <p>8 at the time of the evidentiary hearing on</p> <p>9 certification?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Did you have responsibility for Anderson</p> <p>12 when the motion to certify was filed and briefed?</p> <p>13 <b>A. I believe so. I do recall reading the</b></p> <p>14 <b>briefs. I don't recall specifically if that --</b></p> <p>15 <b>if I did that because they had already been filed</b></p> <p>16 <b>when I took over the case or if I had already</b></p> <p>17 <b>assumed responsibility for the case and then they</b></p> <p>18 <b>were filed. I just don't recall.</b></p> <p>19 Q. Do you recall whether you were involved</p> <p>20 in the decision to challenge the adequacy of</p> <p>21 Speights &amp; Runyan?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And, yes, you recall you were involved?</p> <p>24 <b>A. Yes.</b></p>

9 (Pages 30 to 33)

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1 **A. My understanding is that the homeowner**  
2 **would have a claim against the personal injury**  
3 **trust.**  
4 Q. Where is that set forth?  
5 **A. I believe that's in the plan under the**  
6 **definition of indirect PI trust claim. I may not**  
7 **have the exact terminology there.**  
8 Q. Does the indemnification cover defense as  
9 well as payment of the claim?  
10 **A. That would be set forth in the PI TDP.**  
11 **And I would refer to that document before trying**  
12 **to answer your question. Because I'm not sure of**  
13 **the answer.**  
14 Q. If somebody had sued Grace in 1979 for  
15 exposure to Monokote in the Jordan Hospital in  
16 Plymouth, Massachusetts, would someone at Grace  
17 have gone to see whether it had any records of  
18 Monokote being in the Jordan Hospital?  
19 **A. This is a hypothetical lawsuit before**  
20 **1979?**  
21 Q. No. In 1999. I said before the  
22 bankruptcy. I meant to say that. I may have  
23 misspoken.  
24 **A. Maybe I misheard it. Okay. I'm sorry.**

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1 Q. 1999. Somebody serves a complaint  
2 alleging mesothelioma exposure in the Jordan  
3 Hospital in Plymouth, Mass, would the Grace  
4 person handling the PI claims check to see if  
5 there were any records showing Monokote had been  
6 installed in the Jordan Hospital?  
7 **A. I don't know.**  
8 Q. Who would be the best person to ask that  
9 question to?  
10 **A. Jay Hughes.**  
11 Q. Is Mr. Hughes in Columbia or Boca?  
12 **A. He is based in Cambridge, Massachusetts.**  
13 MR. SPEIGHTS: That's all I have at  
14 this time, Mr. Finke. I reserve my position to  
15 be able to pursue those questions which counsel  
16 has instructed you not to answer and other  
17 questions that flow from that, if I am permitted  
18 to proceed along those lines.  
19 Would somebody who wants to question  
20 the witness like to have this chair or can we do  
21 it from wherever you are?  
22 MR. BROWN: Does anyone else on the  
23 PD side have any questions?  
24 Okay. Why don't we take a five

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1 minute break.  
2 **CI** (The deposition was recessed from  
3 3:46 p.m. to 3:53 p.m.)  
4 **EXAMINATION**  
5 **BY MR. BROWN:**  
6 Q. Mr. Finke, my name is Michael Brown and I  
7 represent the cast of foreign insurance companies  
8 that I identified earlier.  
9 I want to go back and fill in some of  
10 the blanks in terms of your employment history  
11 with Grace. And I want to start by asking the  
12 role that you had pre-petition and then go to  
13 post-petition.  
14 As I understand it, you were senior  
15 litigation counsel at the time the petition was  
16 filed?  
17 **A. Yes.**  
18 Q. And prior to that, your primary  
19 responsibility was with PD claims, is that  
20 correct?  
21 **A. Yes.**  
22 Q. And I think you identified some minimal  
23 involvement on the PI side?  
24 **A. Right. Very sporadic.**

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1 Q. And that was primarily when there was a  
2 PD expert, as I understood it, that may have some  
3 application to PI claims?  
4 **A. More or less, yes. Or was involved in**  
5 **some way in a property -- I'm sorry, personal**  
6 **injury case, which might have ramifications for**  
7 **property damage litigation.**  
8 Q. Okay. And then other than what you  
9 described earlier, you had no involvement on the  
10 PI side?  
11 **A. That's right.**  
12 Q. Okay. Who did have the involvement on  
13 the PI side?  
14 **A. Jay Hughes.**  
15 Q. And what was Mr. Hughes' title  
16 pre-petition?  
17 **A. I believe it was also senior litigation**  
18 **counsel.**  
19 Q. Okay. So you were senior litigation  
20 counsel on PD, he was senior litigation counsel  
21 on PI?  
22 **A. Correct.**  
23 Q. And who did you report to at that time?  
24 **A. When I first started, it was in 1989, it**

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1 was Robert Beber.  
2 Q. How do you say that?  
3 A. Beber. B-e-b-e-r.  
4 Q. Okay. Beber?  
5 A. Right.  
6 I don't recall his title at the time.  
7 He was not general counsel. He became general  
8 counsel a year to two after that.  
9 Q. Okay. And at the time of the petition,  
10 that's who you were reporting to?  
11 A. At the time of the Chapter 11 petition, I  
12 was reporting to David Siegel, general counsel.  
13 Q. Okay. Mr. Siegel had replaced Mr. Beber  
14 by that point?  
15 A. Yes.  
16 Q. Okay. And how about Mr. Hughes at the  
17 time of the petition? Who did he report to  
18 directly?  
19 A. Also to Mr. Siegel.  
20 Q. And Mr. Siegel was the GC at that time?  
21 A. Yes.  
22 Q. Did Grace have national coordinating  
23 counsel for PI claims pre-petition?  
24 A. I don't know if they were actually deemed

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1 or considered national coordinating counsel. But  
2 the Casner & Edwards law firm in Boston --  
3 Q. I'm sorry. What was the name of that?  
4 A. Casner & Edwards, C-a-s-n-e-r, & Edwards  
5 law firm in Boston performed some of the  
6 functions of national coordinating counsel.  
7 Q. Okay. Were they also local counsel for  
8 the Boston area?  
9 A. I believe they were, yes. Yes, in fact,  
10 I think they were.  
11 Q. Okay. And what were the national  
12 coordinating counsel functions that they  
13 undertook?  
14 A. Supported local counsel throughout the  
15 country in terms of providing documents and  
16 transcripts, coordinating the use of experts. I  
17 think they were also involved in responding to  
18 standard discovery requests.  
19 Q. And how many sets of counsel around the  
20 country did Grace have with respect to the  
21 defense of PI claims?  
22 A. Probably -- I'm going to say 25. That's  
23 just a little bit more than a guess. As I said,  
24 I wasn't involved with the litigation of the

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1 personal injury cases.  
2 Q. Okay. Mr. Hughes was the individual who  
3 dealt primarily with the outside counsel handling  
4 PI claims?  
5 A. Yes.  
6 Q. Who else at Grace was involved in the  
7 handling of PI claims?  
8 A. Really, no one else. He had a staff of  
9 legal assistants that helped to maintain the  
10 files. But Jay was really the only in-house  
11 attorney involved with the personal injury cases.  
12 Q. What about Mr. Beber?  
13 A. He would have been involved as well to  
14 the extent of being Jay's superior.  
15 Q. And then Mr. Siegel after Mr. Beber?  
16 A. After Mr. Beber, right.  
17 Q. All right. You I believe testified  
18 earlier this morning that you became assistant GC  
19 for litigation in March of 2006, is that correct?  
20 A. I think so.  
21 Q. Was that a new position?  
22 A. Yes.  
23 Q. Okay. And if I understood your testimony  
24 earlier today, that from that point forward,

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1 Mr. Hughes reported to you rather than reporting  
2 to the general counsel?  
3 A. Yes.  
4 Q. Okay. So from March of 2006 on, is it  
5 fair to say you have played some role on the PI  
6 side?  
7 A. Yes. But I would describe it still as a  
8 minor role.  
9 Q. Can you describe for me what the role has  
10 been?  
11 A. More coordination with the other parts of  
12 our reorganization effort to make sure that  
13 others working on the reorganization such as  
14 finance, such as those who prepare our SEC  
15 disclosure documents, were kept informed of  
16 developments, facts, relating to the personal  
17 injury claims in the Chapter 11.  
18 Q. I think you used the term you were  
19 coordinating the parts. Can you tell me what you  
20 mean by the parts?  
21 A. Well, yes. When I -- part of the role of  
22 assistant general counsel in the Chapter 11 was  
23 to coordinate and oversee all of the individuals  
24 involved, both at Grace as well as outside

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<p>1 counsel as well as certain outside consultants.</p> <p>2 And in coordinating meetings, making sure</p> <p>3 essential documents were distributed</p> <p>4 appropriately. And reporting to management on</p> <p>5 any developments in the Chapter 11, any issues or</p> <p>6 problems that were arising or had arisen. All of</p> <p>7 this was in support of the general counsel who</p> <p>8 also denoted our chief restructuring officer and</p> <p>9 had ultimate responsibility for and continues to</p> <p>10 have ultimate responsibility for the</p> <p>11 reorganization effort.</p> <p>12 Q. Okay. When did Mr. Shelnitz become the</p> <p>13 GC?</p> <p>14 A. I think it was in the spring of 2005.</p> <p>15 Q. Okay. And did I hear you right, that he</p> <p>16 is also the chief restructuring officer?</p> <p>17 A. Yes.</p> <p>18 Q. And he is also the secretary of the</p> <p>19 corporation?</p> <p>20 A. I believe. Well, I know he was. I think</p> <p>21 he still is.</p> <p>22 Q. Does he have any other titles?</p> <p>23 A. No, I don't think so.</p> <p>24 Q. So is it fair to say that you and</p>	<p>1 I wouldn't say sole source but he is certainly by</p> <p>2 far the principal source of information relating</p> <p>3 to not only the personal injury claims</p> <p>4 litigation, but the settlements that were worked</p> <p>5 out pre-petition of those claims, dealings with</p> <p>6 and relationships with outside counsel, both our</p> <p>7 own as well as plaintiff's counsel. Reviewing</p> <p>8 any documents, whether they are, you know,</p> <p>9 pleadings or otherwise. Really relating to most</p> <p>10 of the issues and proceedings in the</p> <p>11 reorganization but particularly those relating to</p> <p>12 asbestos claims, which would include personal</p> <p>13 injury claims.</p> <p>14 Q. You mentioned dealing with your own</p> <p>15 counsel and also dealing with plaintiff's</p> <p>16 counsel. Which plaintiff's attorneys did you</p> <p>17 deal with?</p> <p>18 A. I did not deal with personal injury</p> <p>19 plaintiffs. Jay had, over the years of managing</p> <p>20 the outside, managing the personal injury</p> <p>21 litigation, and he worked on most, if not all, of</p> <p>22 the settlements that were negotiated with the</p> <p>23 plaintiff's counsel.</p> <p>24 Q. You're talking pre-petition now?</p>
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<p>1 Mr. Shelnitz were the point people at Grace for</p> <p>2 the restructuring effort?</p> <p>3 A. Yes.</p> <p>4 Q. Was he primarily responsible for it and</p> <p>5 you secondarily responsible?</p> <p>6 A. Yes.</p> <p>7 Q. And it was in that capacity that you had</p> <p>8 involvement on the PI side after you became the</p> <p>9 assistant GC for litigation?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And can you describe for me</p> <p>12 precisely what role you played on the PI side?</p> <p>13 A. Essentially, it was participating in</p> <p>14 numerous conference calls and meetings to stay</p> <p>15 abreast of issues and problems relating to the</p> <p>16 personal injury claims and any potential</p> <p>17 resolution of them and coordinating with outside</p> <p>18 counsel, make sure that they had what they needed</p> <p>19 in the way of either information or documents or</p> <p>20 guidance, to obtain that information, documents</p> <p>21 or guidance, which, quite frankly, often involved</p> <p>22 having Jay Hughes either research anything that</p> <p>23 he didn't know off the top of his head and</p> <p>24 provide it to whoever needed it since Jay is the</p>	<p>1 A. Pre-petition, yes.</p> <p>2 Q. What about post-petition?</p> <p>3 A. Jay was certainly part of the group that</p> <p>4 negotiated the resolution of personal injury</p> <p>5 claims that is embodied in the plan. But that</p> <p>6 group included others as well.</p> <p>7 Q. Others within Grace?</p> <p>8 A. Others within Grace as well as, of</p> <p>9 course, outside counsel. And I was not directly</p> <p>10 involved in those discussions or negotiations.</p> <p>11 Q. With whom did Mr. Hughes negotiate?</p> <p>12 Which individuals are you talking about?</p> <p>13 A. The representatives of the personal</p> <p>14 injury claimant's committee.</p> <p>15 Q. Do you know the actual names of the</p> <p>16 attorneys?</p> <p>17 A. I can make some assumptions. I can't be</p> <p>18 a hundred percent sure that they are correct.</p> <p>19 Elihu Inselbuch, Peter Lockwood, Roger Frankel,</p> <p>20 Rick Wiram and -- I feel like I'm leaving some</p> <p>21 out. But those are the names that come to mind.</p> <p>22 Q. Did he have any dealings with the</p> <p>23 individuals that have been designated to be the</p> <p>24 TAC members?</p>

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1 **A. Pre-petition or post-petition?**  
2 Q. Post-petition we are talking about. As  
3 you were describing his role in the negotiations.  
4 **A. I don't know.**  
5 Q. And was your role in dealing with PI  
6 issues and the resolution of PI issues indirect  
7 in the sense that Mr. Hughes reported to you or  
8 did you have any direct involvement?  
9 **A. It was really indirect.**  
10 Q. And besides Mr. Hughes, who else was  
11 involved in that effort on the Grace side?  
12 **A. Mark Shelnitz, the general counsel.**  
13 **Robert Tarola.**  
14 Q. I'm sorry?  
15 **A. Robert Tarola, T-a-r-o-l-a, the former**  
16 **CFO. The CEO, Fred Festa, had some involvement.**  
17 **And outside counsel, David Bernick. And I**  
18 **believe -- I don't know if Ted Freedman was**  
19 **involved with the negotiations or came in after a**  
20 **deal had been reached.**  
21 Q. Other than the individuals you have just  
22 run through on the Grace side, was there anyone  
23 else that you can recall that was on the Grace  
24 negotiating team for the resolution of the PI

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1 claims?  
2 **A. Pam Zilly was involved in some of the**  
3 **discussions as well. She is with Blackstone.**  
4 **She is our financial advisor.**  
5 Q. What was her role?  
6 **A. Beyond being financial adviser, I don't**  
7 **know. I wasn't directly involved.**  
8 Q. What was Mr. Festa's role?  
9 **A. I think primarily to ensure that the**  
10 **other parties understood that the Grace**  
11 **representatives there spoke with the full**  
12 **authority of the company, but, again, I was not**  
13 **present at the meetings and discussions that he**  
14 **attended with the personal injury**  
15 **representatives.**  
16 Q. Were you at any of the meetings with the  
17 personal injury representatives?  
18 **A. No.**  
19 Q. I gather Mr. Hughes was?  
20 **A. I believe he was, yes.**  
21 Q. And Mr. Shelnitz?  
22 **A. Yes.**  
23 Q. Okay. I want to shift gears for a second  
24 and turn to insurance. And, again, looking at

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1 the issue pre-petition. Have you had any role or  
2 did you have any role in connection with Grace's  
3 liability insurance program before the petition  
4 date?  
5 **A. No.**  
6 Q. Who was responsible for this at Grace?  
7 **A. Bob Beber handled it from the litigation**  
8 **standpoint. And Jeff Posner was in charge of our**  
9 **risk management function, including insurance.**  
10 Q. When did Mr. Posner leave Grace?  
11 **A. I honestly don't know. I don't recall.**  
12 Q. Was it after the petition date?  
13 **A. I believe it was before.**  
14 Q. And his title immediately before he left  
15 was risk manager?  
16 **A. I don't know.**  
17 Q. But that's the function that he had, was  
18 risk manager for Grace?  
19 **A. Yes.**  
20 Q. Post-petition, have you had any role in  
21 connection with Grace's liability insurance  
22 program?  
23 **A. A limited one. Limited to the extent of**  
24 **motions that have been made or objections**

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1 asserted by insurance. To the extent an issue is  
2 being litigated, I have been involved in  
3 reviewing motion papers and related documents,  
4 participating in conference calls on strategy.  
5 Q. For dealing with the insurance?  
6 **A. For dealing with the insurance. Some of**  
7 **the insurance issues. Certainly not all of them.**  
8 Q. Can you tell me which issues you're  
9 talking about?  
10 **A. Issues related to the claims by Keneb**  
11 **pipeline that they believe they are entitled to**  
12 **insurance coverage. In connection with**  
13 **remediation costs or potential responsibility for**  
14 **remediation costs in connection with the Otis**  
15 **pipeline.**  
16 **There were a few others. I'm just**  
17 **drawing a blank right now.**  
18 Q. Have you had any role in the Scotts  
19 adversary proceeding?  
20 **A. Yes. Thank you. Yes, I have reviewed**  
21 **the papers, not that there have been much --**  
22 **there has been much recently. But I did review**  
23 **the adversary proceeding papers when Scotts first**  
24 **commenced its adversary proceeding. And, again,**

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1 participated in conference calls relating to  
2 their claim that they are entitled to coverage.  
3 Q. And with whom were these conference calls  
4 that you participated?  
5 A. Outside counsel from Kirkland & Ellis.  
6 And Mr. Posner is often on those calls. I think  
7 that's -- and it's usually the same group.  
8 Q. Did you play any role in the manner in  
9 which insurance is handled under the plan?  
10 A. No.  
11 Q. Who did?  
12 A. Other than Kirkland & Ellis, I don't know  
13 who else was involved.  
14 Q. Other than what you have just described,  
15 have you had any role in the manner in which  
16 insurance, unsettled insurance, is handled under  
17 the plan?  
18 A. No.  
19 Q. How about any role in connection with the  
20 manner in which settled insurance is handled  
21 under the plan?  
22 A. No.  
23 Q. Did anyone replace Mr. Posner as the risk  
24 manager?

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1 A. No. He basically still serves the same  
2 function but as an outside consultant.  
3 Q. Okay. Thank you.  
4 (Finke Deposition Exhibit No. 12  
5 was marked for identification.)  
6 BY MR. BROWN:  
7 Q. Mr. Finke, you have what's been marked  
8 Exhibit 12. If you would take a few moments to  
9 look at it. My first question is going to be  
10 whether you have ever seen it before?  
11 A. Yes, I have seen it before.  
12 Q. Can you identify it for me?  
13 A. It's Form 8K that Grace filed with the  
14 SEC announcing its agreement in principle with  
15 the personal injury committee and others to  
16 resolve present and future asbestos related PI  
17 claims.  
18 Q. When did you first see it?  
19 A. I believe it was shortly after it was  
20 filed. A day or two after it was filed.  
21 Q. Had you seen drafts of it before it was  
22 filed?  
23 A. I don't believe I did. But I -- I cannot  
24 be a hundred percent sure I didn't see a draft.

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1 But I don't think that I did.  
2 Q. Do you know, if it wasn't you, do you  
3 know who was involved at Grace in the preparation  
4 of this document?  
5 And just for clarification, it's an  
6 8-K. It has attachments to it. You probably  
7 noted.  
8 A. Right.  
9 Q. One is a pre release and the other is a  
10 terms sheet. So we can probably take -- why  
11 don't we take them one by one.  
12 A. Typically, the 8-K's are prepared by an  
13 in-house attorney, Michael Conron, who obtains  
14 input and facts from persons who are involved  
15 firsthand with the events being reported. In  
16 this case, I believe he would have obtained the  
17 details from Mark Shelnitz since Mr. Shelnitz was  
18 personally involved in the negotiations.  
19 Q. Did he receive any information from you?  
20 A. No.  
21 Q. Okay. How about the press release that's  
22 attached to it? There is a couple of names at  
23 the top from media relations and investor  
24 relations. But do you know who prepared the

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1 press release?  
2 A. Where are you at? I'm not finding it.  
3 Q. I think it's probably page five it starts  
4 at.  
5 A. Okay. Okay. There we go. William  
6 Corcoran is -- I forget if he is executive  
7 vice-president or senior vice-president. And he  
8 is in charge of media relations, among other  
9 things. Typically, Mr. Corcoran prepares press  
10 releases. In the same manner as I described, I  
11 described Mr. Conron preparing 8-K's. He would  
12 have obtained the information from whoever was  
13 personally involved.  
14 Q. And would that have been Mr. Shelnitz or  
15 someone else?  
16 A. I'm pretty confident it would have been  
17 Mr. Shelnitz.  
18 Q. But it was not you?  
19 A. Correct.  
20 Q. Let's go to the terms sheet, which  
21 appears to begin on page eight.  
22 A. Um-hmm.  
23 Q. Had you seen this terms sheet prior to  
24 the filing of the 8-K?

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<p>Page 182</p> <p>1 A. I believe I did. 2 Q. When? 3 A. I think I saw it in a prior draft. 4 Within a few days of the final, the final 5 version. 6 Q. Were you involved in preparing any of the 7 drafts? 8 A. No, I was not. 9 Q. Do you know who was? 10 A. No, I don't. I believe Mr. Shelnitz was 11 involved along with outside counsel. 12 Q. How about Mr. Hughes? 13 A. I don't know. 14 Q. Do you know who was involved for the 15 other constituencies that are a party to the 16 terms sheet? 17 A. No, I do not. 18 Q. In the first line of the text, it says, 19 this term sheet sets forth certain of the 20 principal terms and conditions. 21 Are there other principal terms and 22 conditions that are not reflected or were not 23 reflected in the terms sheet? 24 A. I don't know. I wasn't involved in the</p>	<p>Page 184</p> <p>1 consent of any of its insurers prior to agreeing 2 to that term with the other constituencies to the 3 terms sheet? 4 A. I don't know. 5 Q. Who would know? 6 A. Mr. Shelnitz. 7 Q. If you turn to the next page on page nine 8 under v. I want to direct your attention to the 9 second paragraph that begins with the word, 10 provided. 11 A. Okay. 12 Q. Do you understand what's being referred 13 to in that section? 14 A. No, I'm not sure what's being referred to 15 by the foregoing. 16 (Finke Deposition Exhibit Nos. 13 and 17 14 were marked for identification.) 18 BY MR. BROWN: 19 Q. Mr. Finke, you have two documents that 20 have been marked Exhibit 13 and one is Exhibit 14 21 in front of you. Can you just identify them both 22 for me? 23 A. Exhibit 13 is debtor's preliminary list 24 of witnesses that they intend to call during the</p>
<p>Page 183</p> <p>1 discussions. I don't know if there were other 2 principal terms and conditions that have been 3 agreed upon at that time and not included. 4 Q. Were any of Grace's insurers involved in 5 the discussions that led up to the execution of 6 the terms sheet? 7 A. Not to my knowledge. But, again, I 8 wasn't personally involved in the discussions. 9 Q. Do you know whether Grace's insurers were 10 purposely left out of any discussions leading up 11 to the terms sheet? 12 A. Not that I know of. 13 Q. Who would be the individual at Grace, to 14 your knowledge, that would know the answer to 15 those questions? 16 A. Mr. Shelnitz. 17 Q. If you look on the first page down at 18 I.A.1.b, titled, Insurance? 19 A. Yes. 20 Q. There is a reference there to the 21 assignment of insurance policies and all 22 insurance proceeds. Do you see that? 23 A. Yes. 24 Q. Did Grace, to your knowledge, seek the</p>	<p>Page 185</p> <p>1 confirmation hearing and is dated March 13, 2009. 2 Exhibit 14 is the second amended case 3 management order related to the first amended 4 joint plan of reorganization and was ordered on 5 January 29, 2009. 6 Q. Would I be correct if I said that you 7 have seen both of these documents before? 8 A. Yes, you would. 9 Q. If you look at the witness list, you'll 10 note that your name appears first? 11 A. Yes. 12 Q. As someone who, at least on a preliminary 13 basis, is going to testify in Phases I and II of 14 the confirmation hearing? 15 A. Um-hmm. 16 Q. About company information. 17 What is the company information that 18 you possess relevant to plan confirmation? 19 MS. ESAYIAN: Objection to the form 20 of the question. You can answer, if you can. 21 THE WITNESS: I was asked by outside 22 counsel to be available to testify at one or both 23 of the confirmation hearings to the extent they 24 needed someone to present their basic company</p>

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<p><b>CI</b> <b>PP's Obj: R; F</b> Page 186</p> <p>1 information, such as anything from the nature of 2 our businesses to number of employees and more 3 specifically with respect to our asbestos 4 litigation and claims, both historical, meaning 5 pre-petition litigation history relating to 6 asbestos claims, as well as the asbestos related 7 claims filed in the Chapter 11. 8 The only thing I wanted to add was, 9 in a subsequent discussion, it was decided that 10 Jay Hughes would most likely handle any issues 11 relating or testimony relating to personal 12 injury -- asbestos personal injury claims and 13 issues. 14 BY MR. BROWN: 15 Q. That was going to be my question. You 16 used the generic term asbestos litigation. Did 17 you mean PD asbestos litigation? 18 A. Well, initially the discussion was 19 generic. But, as I say, subsequently it was 20 narrowed to property damage and attic insulation 21 within my purview. 22 Q. To your knowledge, you're not going to be 23 proffering any testimony on PI issues? 24 A. That is my understanding, yes.</p>	<p>Page 188</p> <p>1 second phase of the confirmation hearing, are 2 you, to your knowledge, being proffered to offer 3 any testimony with respect to i or iii? 4 A. I think that's unknown at this point. 5 Q. Is that true for both i and iii? 6 A. Yes. 7 Q. Okay. I want to go back to the 8 preliminary witness list. And I think most of 9 these individuals on here we have already 10 identified in terms of what their acknowledge is. 11 Pam Zilly, she is with the Blackstone Group, she 12 is the financial person? 13 A. Correct. 14 Q. I believe you said Denise Martin is a PD 15 expert? 16 A. Yes, she is an expert. She'll offer 17 expert testimony concerning the likelihood that 18 future property damage and ZAI claims will be 19 brought. 20 Q. Okay. I believe I heard earlier the name 21 Hudson LaForce. Who is that? 22 A. He is our current chief financial 23 officer. 24 Q. And Derrick Tay?</p>
<p><b>CI</b> <b>PP's Obj: R; F</b> Page 187</p> <p>1 Q. Would your answer be the same with 2 respect to insurance related issues? 3 A. Yes. 4 Q. How about with the manner in which 5 indirect asbestos PI trust claims are handled 6 under the plan? 7 A. I would expect that Jay Hughes would 8 handle that. 9 Q. Okay. If you can look at what's been 10 marked as Exhibit 14, the second amended case 11 management order. I want to direct your 12 attention specifically to paragraph two. 13 The second sentence in paragraph two 14 talks about the first phase of the confirmation 15 hearing. Do you see that? 16 A. Yes. 17 Q. And there are three Romanettes in that 18 sentence. 19 Do I understand you correctly that 20 you are not, to your knowledge, being proffered 21 to offer any testimony relevant to i or ii? 22 A. That's correct. 23 Q. And if you go to the next sentence, which 24 talks about the topics to be addressed in the</p>	<p>Page 189</p> <p>1 A. He is a Canadian restructuring attorney 2 who represents Grace in Canada concerning the 3 Canadian ZAI claimants. 4 Q. And Mr. Dunbar, he is an outside 5 modelling consultant? 6 A. Yes, I believe that's right. 7 Q. Mr. Hughes we have talked about. 8 What about all the doctors? 9 A. Can you be more specific what you're 10 asking? 11 Q. What's the area? Have each of the other 12 witnesses listed here starting with I guess 13 Dr. Florence, are they all experts? 14 A. Other than Jay Hughes, yes. 15 Q. And they have all submitted reports at 16 this point? 17 <b>CI</b> A. I presume so. 18 (Finke Deposition Exhibit No. 15 was 19 marked for identification.) 20 BY MR. BROWN: 21 Q. All right. Mr. Finke, you have before 22 you a document marked Exhibit 15. The first 23 question is, can you identify it? 24 A. Exhibit 15 is debtors' response to</p> <p><b>PP's Obj: R; DE</b></p>

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CF PP's Obj: R; BE Page 190

1 **Government Employees Insurance Company and**  
2 **Columbia Insurance Company's requests for**  
3 **admission, interrogatories and requests for**  
4 **production of documents.**  
5 Q. And I gather you have seen this document  
6 before?  
7 **A. Yes, I have.**  
8 Q. Okay. If you would turn to the last  
9 page.  
10 **A. Um-hmm.**  
11 Q. Is that your signature on the  
12 verification?  
13 **A. Yes, it is.**  
14 Q. The verification is worded a little  
15 oddly. At least in my experience.  
16 The first question I have for you is  
17 that, do you actually have any personal knowledge  
18 of the information that's contained in the  
19 responses to the interrogatories that you  
20 verified?  
21 **A. Well, I'm just going to note for the**  
22 **record that it's a rather long document. So if**  
23 **you want him to read the whole thing, that's**  
24 **going to take a while.**

CF PP's Obj: R; BE Page 192

1 Q. It says that, prior to September 19,  
2 2008, which is when the initial joint plan was  
3 filed, correct?  
4 **A. Yes.**  
5 Q. Okay. It says, prior to that time,  
6 debtors did not communicate or consult with GEICO  
7 or Columbia regarding the proposed terms of the  
8 plan, asbestos PI trust agreement, asbestos  
9 insurance transfer agreement with TDP.  
10 Why not?  
11 **A. I was not involved in whatever decision**  
12 **was made concerning communicating or consulting**  
13 **with the insurers.**  
14 Q. And would that have been Mr. Shelnitz  
15 again that was involved in that?  
16 **A. I don't know that. But that is who I**  
17 **would -- who I would ask.**  
18 Q. I want to direct your attention to the  
19 fourth interrogatory.  
20 **A. Okay.**  
21 Q. In Grace's response to interrogatory  
22 four, the latter portion of it, it says, but also  
23 does not prohibit participation. Do you see  
24 that?

CF PP's Obj: R; BE Page 191

1 Q. I don't want him to read the whole thing.  
2 If you turn to page 50.  
3 **A. I was just going to read the -- review**  
4 **the answers to interrogatories.**  
5 In general, no, I would not have  
6 firsthand knowledge of most of the facts or the  
7 facts asserted in the responses to the  
8 interrogatories.  
9 Q. In your verification, you note, sort of  
10 the middle or halfway down, that the responses  
11 are true and correct to the best of my personal  
12 knowledge or based on information supplied to me  
13 by others.  
14 **A. Right.**  
15 Q. Who are the others?  
16 **A. Primarily counsel at Kirkland & Ellis.**  
17 Q. Anyone else?  
18 **A. No, I don't believe so.**  
19 Q. Okay. Can I direct your attention to the  
20 first interrogatory?  
21 **A. Um-hmm.**  
22 Q. Just let me know when you're finished  
23 reading it.  
24 **A. Okay. I'm ready.**

CF PP's Obj: R; BE Page 193

1 **A. Yes.**  
2 Q. Could you describe for me your  
3 understanding of the manner in which Grace's  
4 insurance companies could participate in the  
5 investigation and evaluation defense in allowance  
6 or settlement of the asbestos PI claims in the  
7 event the plan is confirmed?  
8 **A. My understanding of that provision is the**  
9 **insurers could negotiate with the PI trust for**  
10 **whatever role the insurers would seek to have**  
11 **with respect to the claim submitted to the PI**  
12 **trust.**  
13 Q. And with whom would they be negotiating  
14 specifically, the individuals?  
15 **A. Well, the trustees. Whoever that is.**  
16 Q. Would the TAC be involved in that  
17 process?  
18 **A. I would not know that. I do not know**  
19 **that.**  
20 Q. So it's your understanding that the only  
21 way in which the insurers would be involved was  
22 through some sort of negotiation with the trust?  
23 MS. ESAYIAN: Objection to  
24 foundation. But you can answer, if you can.



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<p>Page 194</p> <p>1 THE WITNESS: I wouldn't say it's the 2 only way because I haven't -- I'm not 3 knowledgeable enough about the manner in which 4 the trust would operate to know whether that's 5 the only avenue. 6 BY MR. BROWN: 7 Q. It's the only one you're aware of? 8 A. It is the only one I am aware of, yes. 9 Q. Is there someone that has some knowledge 10 about other mechanisms by which Grace's insurers 11 could be involved in the topics that are 12 identified in interrogatory number four? 13 A. I doubt very much that anyone at Grace 14 would have such knowledge since I don't believe 15 anybody at Grace has been involved in 16 bankruptcies before or asbestos 524 G trusts. 17 Q. If not at Grace, where or who? 18 A. You would have to consult with 19 experienced bankruptcy counsel. 20 Q. Kirkland &amp; Ellis? 21 A. They are taken. 22 Q. Okay. 23 MR. BROWN: Why don't we take a five 24 minute break.</p>	<p>Page 196</p> <p>1 interrogatories that have been propounded by 2 insurers. 3 Q. Is it fair to say that you didn't have 4 any independent knowledge of any of the responses 5 that were given to the insurance companies? 6 A. The answer is if I had -- if I had any, 7 it would be very little. I hate to make the 8 sweeping statement that there is not a single 9 answer. 10 Q. I'm just trying to save you the question 11 from seven other lawyers. 12 A. I understand. I just don't want to be 13 caught with a generalization where somebody finds 14 an exception. 15 Q. Okay. Fair enough. 16 Have you either pre-petition or 17 post-petition had occasion to review the terms of 18 any of Grace's insurance policies? 19 A. Certain specific provisions I have 20 reviewed. I have not read any of the policies in 21 their entirety. But, for example, in connection 22 with the Scotts adversary proceeding, I did 23 review the I guess relevant provisions of the 24 policy that Scotts is relying on.</p>
<p>Page 195</p> <p>1 THE WITNESS: Okay. 2 (Deposition recessed from 4:52 p.m. 3 to 5:03 p.m.) 4 BY MR. BROWN: 5 Q. Mr. Finke, I understand you had a 6 clarification on one of your responses? 7 A. Yes. With respect to Exhibit 15, I had 8 identified counsel as Kirkland &amp; Ellis as having 9 supplied information upon which I relied in 10 connection with the debtor's interrogatory 11 responses. An additional person that I forgot 12 about was, but who did review the interrogatory 13 responses, was Jeff Posner. I also relied on his 14 review and comments concerning the answers. 15 Q. Did Mr. Posner review all of the answers 16 or were there certain ones that he passed on? 17 A. My understanding is he reviewed all of 18 them. 19 Q. The question will probably come up. But 20 there is a lot of other insurers here that served 21 interrogatories on you, on Grace. Is the answer 22 the same for all of them as well? 23 A. Yes. As far as I know, he reviewed all 24 of the interrogatory answers or answers to</p>	<p>Page 197</p> <p>1 Q. By that, do you mean the vendor 2 endorsement? 3 A. Yes. 4 Q. Anything else? 5 A. There might have been a few, very few 6 other portions of policies that I reviewed. But 7 nothing specific comes to mind. 8 Q. How about in connection with Keneb's 9 claims? Have you reviewed any policies in 10 connection with that? 11 A. I have not. 12 Q. You're aware, are you not, that Grace had 13 a number of pre-petition settlement agreements 14 with various insurers? 15 A. Yes. 16 Q. Have you reviewed any of those 17 agreements? 18 A. I have not. 19 Q. You mentioned I guess that you had 20 reviewed the complaint, I think, in the Scotts 21 adversary? 22 A. Yes. 23 Q. When is the last time you reviewed that 24 complaint?</p>

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W.R. Grace & Co., et al.  
 RICHARD CHARLES FINKE

<p>Page 198</p> <p>1 <b>A. I don't think I have reviewed it since</b>          2 <b>shortly after they filed it.</b>          3 Q. Back in the fall of 2004?          4 <b>A. That sounds right, yeah.</b>          5 Q. Is that when you reviewed the vendor          6 endorsement that you just referred to?          7 <b>A. Yes. All at the same time.</b>          8 Q. Do you have an understanding as to how          9 the claims that Scotts has against the various          10 insurers that are named in the adversary          11 proceeding, how those claims are treated under          12 the plan?          13 <b>A. I believe they are treated as indirect PI</b>          14 <b>trust claims under the plan.</b>          15 Q. And what does that mean in real terms?          16 <b>A. That the insurers' claims would be</b>          17 <b>presented to the or submitted to the PI trust.</b>          18 MS. ESAYIAN: Are you asking about          19 the insurers claims or Scotts' claims?          20 MR. BROWN: I was asking about the          21 Scotts claims against the insurers.          22 THE WITNESS: I apologize. I thought          23 you were referring to any insurers' claims          24 resulting from coverage of Scotts' claims.</p>	<p>Page 200</p> <p>1 <b>have been available has been exhausted.</b>          2 Q. To the extent that the claims by Keneb do          3 give rise to claims by the insurers, how are they          4 treated under the plan, to your knowledge?          5 <b>A. That I do not know.</b>          6 <b>(Finke Deposition Exhibit No. 16 was</b>          7 <b>marked for identification.)</b>          8 BY MR. BROWN:          9 Q. All right, Mr. Finke, you have before you          10 Exhibit 16. Can you identify this document?          11 <b>A. Yes. This is the debtors' response to</b>          12 <b>One Beacon America Insurance Company and Seaton</b>          13 <b>Insurance Company's requests for admission,</b>          14 <b>interrogatories and requests for production of</b>          15 <b>documents.</b>          16 Q. Okay. And you'll note that on page 21,          17 the interrogatory responses begin?          18 <b>A. Yes.</b>          19 Q. And your verification, I believe, is          20 essentially identically worded to the one we just          21 looked at for GEICO and Columbia, is that          22 correct?          23 <b>A. Correct.</b>          24 Q. And am I correct that the direct source</p>
<p>Page 199</p> <p>1 Scotts' claims, I believe those are          2 also indirect PI trust claims.          3 BY MR. BROWN:          4 Q. And is it your understanding that they          5 are enjoined in their entirety as against the          6 insurers?          7 MS. ESAYIAN: Objection to form. But          8 you can answer, if you can.          9 <b>THE WITNESS: I don't know.</b>          10 BY MR. BROWN:          11 Q. Do you have an understanding as to          12 whether the claims that Keneb is asserting give          13 rise to any claims by certain insurers against          14 Grace?          15 <b>A. I think, in theory, my understanding is</b>          16 <b>that, in theory, it could, they could, Keneb's</b>          17 <b>claims could give rise. But that the likelihood</b>          18 <b>that there is any coverage available is very</b>          19 <b>small.</b>          20 Q. Coverage available to --          21 <b>A. Keneb.</b>          22 Q. Do you understand what the reason for          23 that is or the basis is for that statement?          24 <b>A. Only that what coverage might otherwise</b></p>	<p>Page 201</p> <p>1 of any knowledge with respect to the responses          2 comes either from Kirkland &amp; Ellis or from          3 Mr. Posner?          4 <b>A. That's correct.</b>          5 Q. You don't have any personal knowledge of          6 the responses?          7 <b>A. No, I do not.</b>          8 Q. Let me direct your attention to          9 interrogatory number three and the response to          10 it.          11 <b>A. Okay.</b>          12 Q. Were you involved in the events leading          13 up to the January 13, 2005 amended joint plan          14 that Grace filed?          15 <b>A. I was involved in certain aspects or</b>          16 <b>certain sections of the plan.</b>          17 Q. Did you play a role with that plan          18 similar to the one you played with the joint          19 plan?          20 <b>A. In general, yes.</b>          21 Q. Are you familiar with the term resolved          22 that was used to describe the insurance policies          23 under that prior plan?          24 <b>A. I remember the prior plan included that</b></p>

51 (Pages 198 to 201)